

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>MARK A. ANGUISH</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 239,907
<b>MIDWEST DRYWALL</b>	)	
Respondent	)	
AND	)	
	)	
<b>HARTFORD ACCIDENT &amp; INDEMNITY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appeals from the Order of Administrative Law Judge Bryce D. Benedict dated May 4, 1999. The Administrative Law Judge granted claimant benefits, finding that the October 21, 1998, event did not constitute a new accident and that claimant's symptoms were attributable to the September 13, 1998, accident.

**ISSUES**

- (1) Did claimant suffer accidental injury arising out of and in the course of his employment on or about October 21, 1998?
- (2) Did claimant provide timely notice of the October 1998 accident?
- (3) Do certain defenses apply?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds that the Order of the Administrative Law Judge, granting claimant benefits for a September 13, 1998, injury, should be affirmed.

Claimant began working for respondent as a metal framing mechanic and drywall layer in February 1993. Claimant suffered personal injury by accident arising out of and

in the course of his employment with respondent on September 13, 1998. Respondent admits this accident and further admits that it had timely notice of this accident.

Claimant received medical treatment for this accident and was released to return to work on approximately October 18, 1998. On October 20 and 21, 1998, claimant experienced increased pain in his back, right hip and right leg. In particular, on October 21, 1998, when trying to descend a ladder, claimant noted that his right leg would not bend. He left the job site and went to Dr. Ronald Zoeller, a chiropractor in Topeka, Kansas. At that time, claimant was suffering acute pain in the right hip area, radiating into the right lower leg. In addition, claimant was experiencing significant abdominal complaints.

Dr. Zoeller referred claimant to Stormont-Vail Regional Health Center for additional tests. Claimant was hospitalized through October 30, 1998, at which time, against doctor's advice, claimant discharged himself before a final diagnosis could be rendered. Claimant underwent numerous tests during this several-day stay in Stormont-Vail Regional Health Center, including colon, bowel and intestinal examinations. While the final diagnosis was not made, due to claimant's early departure, it is noted that the Stormont-Vail medical records primarily deal with abdominal complaints and tests, rather than hip and back symptoms.

Shortly thereafter, claimant moved to Victorville, California, in order to take advantage of the more lucrative employment opportunities in Las Vegas, Nevada. On November 23, 1998, while standing at his breakfast counter, claimant's right leg gave out or, as he described it, turned to jelly, and he fell. Claimant received treatment from Dr. Sanjay J. Chauhan, a board certified neurologist, and Dr. Patrick J. Wymore, a chiropractor, for his low back symptoms. Dr. Chauhan diagnosed lumbar radiculopathy with partial foot drop on the right side, and ordered several tests. Dr. Chauhan opined that the weakness in claimant's right leg may be non-industrial, but he felt the low back pain was clearly industrial and a result of claimant's September 13, 1998, accident.

Respondent argues that claimant's current symptoms were related to the October 21, 1998, incident. The medical evidence indicates, however, that claimant's October 1998 back and hip symptoms were temporary. Additionally, the treatment provided, to a significant degree, was related to abdominal pain, rather than hip, leg or back pain.

The Appeals Board finds the medical report of Dr. Chauhan to be persuasive that claimant's ongoing symptoms are related to the September 13, 1998, accident, rather than the temporary aggravations and abdominal pain suffered in October 1998. In addition, the Appeals Board finds that the incident on November 23, 1998, was the result of claimant's already-injured leg giving out, rather than a new and separate accident. When a primary injury under the Workers Compensation Act arises out of and in the course of a worker's employment, every natural consequence that flows from that injury is compensable if it is

a direct and natural result of the primary injury. Gillig v. Cities Service Gas Co., 222 Kan. 369, 564 P.2d 548 (1977).

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated May 4, 1999, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1999.

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BOARD MEMBER

c: Michael B. Myers, Topeka, KS  
P. Kelly Donley, Wichita, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director